

Response to Public Comments

PROPOSED 2003 STATE LAND LEASE SALE, SCHUYLER AND STEUBEN COUNTIES

The State received nominations from the oil and gas industry to lease State reforestation and wildlife management areas in Steuben and Schuyler Counties following a 1999 lease sale. Department of Environmental Conservation (DEC) staff reviewed the nominated tracts and, through a tract assessment process, determined which areas would be available for drilling operations and what portions of these tracts would be leased on a non-surface entry basis. Leases were developed and stipulations were generated to provide for exploration and development of the oil and gas resources in an environmentally safe manner. The DEC decided to hold an information and public comment meeting to provide information, answer questions, explain the leasing and well drilling process and identify natural resource program responsibilities.

Title 11 of Article 23 of New York State Environmental Conservation Law gives DEC the authority to lease all State lands for oil and gas development except for park lands and those lands otherwise specifically prohibited. State Reforestation Areas, Multiple Use Areas and Wildlife Management Areas are available for leasing. Statutory authority for leasing public lands has existed since the 1930's and oil and gas production has been undertaken on a number of State tracts since the 1960's.

Public notice for the proposed 2003 State lease sale and DEC's information and public comment meeting was published in the Environmental Notice Bulletin the week of December 25, 2002. Approximately 200 notices of the proposed State lease sale and information and public comment meeting were mailed to local government officials, environmental groups, concerned individuals and various other organizations in late December, 2002. Additional notices of the meeting were published in local papers and petroleum trade journals during the first week of January, 2003.

Written comments on the proposed lease sale were received at the information and public comment meeting in Corning on January 9 and 10, 2003 and by letters/email until February 1, 2003. Seventy six individuals registered at the meeting and many others attended but chose not to sign in. Twenty two written comments were submitted at the Corning meetings and thirty seven letters/emails were subsequently received by the Division of Mineral Resources in Albany prior to the close of the comment period. One comment was submitted after the close of the comment period but is included in this response. Based on attendance at the public information meeting and the number of written comments received, the DEC believes that the time allocated for public comment has been sufficient for all concerned parties to make their views on the lease sale known.

The comments received have been grouped into several categories and are responded to in the following topic paragraphs: Texas Hollow State Forest, DEC staffing, State lease terms, water pollution, drilling on private vs. public lands, environmental damage, trails, damage to roads,

fires, additional public meeting, alternate energy sources, rattlesnake habitat, ATV use and a section for additional comments.

Texas Hollow State Forest - Schuyler SRA #3

Seventeen written public comments dealt with potential surface disturbances of Texas Hollow State Forest, also known as Schuyler State Reforestation Area #3. The original tract assessment restrictions for Texas Hollow State Forest excluded 632 of the 937 available acres (67%) of the parcel from surface disturbance. The long and narrow shape of Texas Hollow State Forest is such that gas reserves could be drained from adjacent wells on private lands. It is also possible that directional drilling technology could also be utilized to access any gas deposit that might exist at depth beneath the parcel.

The DEC has decided, based upon the comments received, the unique nature of the surface features, and the size and shape of the parcel such that gas reserves could be drained from adjacent private lands, that the entire 937 acre Texas Hollow State Forest parcel will be excluded from surface entry and surface disturbance. No drilling, access road construction, or other surface disturbances related to oil and gas drilling will be allowed. The only potential pipeline route available to a lessee would be along the Steam Mill Road right-of-way. Surface manager approval of pipeline placement and reclamation is required.

Conclusion

A non-surface entry lease for Texas Hollow State Forest will be available to potential bidders.

DEC Staffing Levels

The Department received two comments which questioned the ability of the Divisions of Mineral Resources and Lands and Forests to manage the increased workload associated with the proposed 26,000 acre lease sale.

Seven new leasing positions were included in Governor Pataki's 2002-2003 budget. Five additional Mineral Resources staff and two additional staff in the Division of Lands and Forests were hired in the fall of 2002 to work on this and future sales. The additional leasing staff provides personnel to undertake the sale workload, manage the surface lands and inspect drilling/production activities in the region.

Conclusion

The DEC is able to undertake the additional work associated with State land leasing activities.

State Lease Terms

Four comments were received regarding the terms under which the State was making its lands available for leasing. One respondent questioned why companies would be allowed to acquire leases on State lands for \$3 per acre. Another individual questioned the structure of the bidding process, believing that the State would receive greater amounts of money by allowing companies

to bid for the leases based on the amount of royalty they would pay. Two respondents raised questions about where funds generated from the lease sale would go.

DEC awards a lease to the company or individual that submits the highest dollar per acre cash bonus bid. The minimum bonus bid is \$5 per acre but bonus bids received in the 1999 State lease sale were as high as \$313 per acre. The DEC reserves the right to reject any and all bids. The State anticipates that many of the tracts nominated for this sale will receive bonus bids far in excess of the \$5 per acre minimum. Annual delay rentals during the leases' five year primary terms are \$3 per acre if no well is drilled on the parcel. Delay rental payments cease when a producing well is drilled on the lease and the State commences to receive royalty revenue for its proportionate share of the production proceeds.

Funds generated from leasing of State Reforestation Areas and Multiple Use Areas are deposited in the State's General Fund. Revenues generated from the leasing of Wildlife Management Areas are deposited in the Conservation Fund.

Conclusion

DEC believes that fixing the royalty at the traditional petroleum standard of 1/8th and requiring bonus bids based on a dollar amount per acre will generate greater revenue to the State given the tremendous economic risk of successful oil and gas exploration. Using this process, the State receives revenue early in the life of the lease even if a well is never drilled and successfully produced. The State receives a premium for the potential value of the lease and retains the opportunity to collect long term revenue through production royalties.

Potential for Water Pollution

Four respondents were concerned about the potential for pollution of surface waters and drinking water supplies.

DEC regulations require that all oil and gas wells be constructed with steel casing and cement to prevent subsurface fluids from contaminating aquifers and surface waters. Operators are required to submit a site-specific drilling plan that details their proposed drilling, casing and cementing program with a drilling permit application. Applications to drill are carefully reviewed by regional staff to ensure environmental protection. A drilling permit will only be issued if the application satisfies all DEC regulatory requirements. DEC staff inspect drilling activities and casing and cementing operations to ensure regulatory compliance with permit conditions.

Erosion and sedimentation control plans are also required on a site-specific basis. Staff conduct a pre-site inspection to identify the best management practices needed to control sedimentation. The operator is informed of the erosion and sedimentation control devices that must be in place prior to the commencement of drilling operations. Typical surface disturbances for deep gas wells have been in the one to three acre range. Active drilling takes place for approximately thirty days. The DEC requires the reclamation of every well site. The producing gas well's final footprint is typically less than 1/2 acre in size.

Conclusion

The DEC's drilling permit requirements including rigorous casing and cementing standards and erosion control measures to protect surface and ground water resources.

Drilling on Public vs. Private Lands

Two comments were directed towards the necessity of drilling on State lands. The respondents believed that wells on private lands would be capable of draining the natural gas under State lands. One respondent asserted that DEC was "robbing" private landowners of royalty revenues by allowing drilling on State lands.

Oil and gas accumulations are localized in discrete areas due to various geological factors. The accumulations may be located entirely under State or private lands or partially under each. The concept of correlative rights holds that each mineral owner should have an opportunity to recover the hydrocarbons beneath his/her property. Leasing of State lands is necessary to ensure royalties are paid even where State land is being drained by wells on adjacent private lands. The DEC approves the size and shape of units for producing wells based on geological, geophysical and engineering data. After DEC review of the technical data and approval of a spacing order, each landowner approved to be included in the producing unit receives royalties based upon their percentage of the total production unit acreage.

Conclusion

DEC statute and regulations protect the correlative rights of all mineral owners, including the people of the State of New York, to hydrocarbons (oil and gas) beneath their lands. DEC's establishment of well spacing and compulsory integration orders ensures that payments are made to all whose lands are drained by the well.

Unspecified Environmental Damage

Seven comments were received from individuals concerned about unspecified environmental damages resulting from drilling and production operations on State lands.

DEC oil and gas regulations are among the most stringent in the United States in providing for environmental protection. The leases nominated for this sale contain further safeguards on a lease-specific basis to provide additional protection to sensitive areas. Each site is evaluated by the land manager to identify those areas warranting further protections. Over 170 wells have been drilled on State land. The State of New York presently receives royalties from 102 actively producing wells on State lands.

Conclusion

DEC, through its regulations and site inspection process, protects the environment, minimizes surface disturbance and ensures the reclamation of the affected area.

Trails

Eight comments were received regarding existing trails and the potential for their disturbance by oil and gas operations on State lands.

The tract assessment process identified the State land parcels with trails and incorporated protective measures for the trails and the land immediately adjacent to them. Two areas with trails such as Schuyler SRA #3 - Texas Hollow State Forest and Steuben SRA #21 - McCarthy Hill State Forest are excluded from oil and gas drilling activities but are available as non-surface entry leases. Some tracts may have a portion of the trail in an area which is approved for surface entry leasing. Trails in these areas have a non-disturbance buffer of 500 feet. Any disturbance to a trail requires the approval of the surface manager.

Conclusion

The DEC has provided protection for trails on every parcel offered for lease in the proposed 2003 lease sale.

Damage to Roads

Four comments were received from people concerned about possible damage to roads from truck traffic during drilling and production operations and increased traffic.

Local governments have the authority and responsibility to see that road traffic conforms to the weight limits and conditions of their roads. Local governments may recover damages caused by heavy truck traffic or require posting of bonds as surety against such damages. Local roads may see increased traffic during drilling operations but once wells are completed traffic should return to normal levels. Typically, producing gas wells are monitored by the operator through the use of a pickup truck.

Conclusion

The DEC has no jurisdiction over local roads according to the Environmental Conservation Law, 23-0303.2, and must therefore rely on the local government for oversight. The Environmental Conservation Law, 23-0305.13, requires that the operator has to submit prior notice of proposed drilling operations to the local government affected by the drill site location. Towns and counties have the ability to post roads and to set weight limits when the conditions are present such that road damage may occur.

Potential for Fires

Two respondents were concerned about the possibility of damage from well fires and the ability of local fire departments to respond to such fires.

DEC requires the use of blow out preventers during drilling operations to control unexpected flows of gas or oil which could result in fires. A blow out preventer test must be witnessed by DEC staff prior to the drilling of the gas bearing formations. DEC also requires that safety

equipment be installed on the wellhead and that fluids be kept on site to control the well and to minimize the potential for fire. Local fire departments are notified in advance so that they may take the proper precautions for the penetration of the gas bearing formations.

Gas flaring is prohibited without a DEC flaring permit. In some instances it may be necessary to flare gas during drilling operations for safety reasons. DEC representatives inspect the layout of flow lines prior to flaring gas, to ensure that any flare remains under control. Additionally, local fire departments are notified when a company anticipates drilling into the Trenton/Black River formation. Most companies now choose to drill into the Trenton/Black River formation using drilling mud, which results in no gas flared.

Conclusion

DEC safety-equipment requirements have been instrumental in well control such that no well fires have occurred during the drilling of over 150 Trenton/Black River wells statewide.

Public Meeting in Schuyler County

Four comments were received requesting that an additional public meeting be held in Schuyler County to allow residents of that area an opportunity to speak to the Department staff and voice their concerns about the proposed State land lease sale.

DEC believes the public meetings held at the Corning site in the Radisson Hotel on Thursday January 9, 2002 from 5:00 pm to 10:00 pm and again the following day, Friday January 10, 2002 from 9:00 am to 1:00 pm, were in a central location, had adequate accommodations and were undertaken during time slots which accommodated anyone who wished to attend.

Conclusion

No additional public meetings will be scheduled.

Alternate Energy Sources

Four comments were received from those who were interested in increasing the use of alternate or renewable sources of energy.

One objective of the New York State Energy Plan issued in June, 2002 is to increase energy diversity in all sectors of the State's economy through greater use of energy efficiency technologies and alternative energy resources, including renewable energy. New York is promoting the development of renewable energy through a number of initiatives including a green building tax credit, environmental disclosure labeling, solar easements, net metering law credit for use of private photovoltaic equipment, and Governor Pataki's Executive Order 111 which directs State agencies and other affected agencies to seek to increase their purchase of energy generated from specific renewable technologies.

Conclusion

Even as New York moves toward greater use of alternative energy sources, there remains a

present need for fossil fuels to satisfy our energy needs. Clean-burning natural gas is a preferred energy source due to its environmental benefits and major reserves located within the United States and New York.

Timber Rattlesnake Habitat

Two comments were received from individuals who were concerned about endangering the timber rattlesnake population during the months of April through November.

DEC is aware of the presence of timber rattlesnakes in the areas proposed for leasing and has a regulatory requirement to provide protection. Known timber rattlesnake habitats will be respected and no surface activity will be allowed in and/or around these areas. Operators will be instructed to avoid these areas and will be required to provide alternative routes for pipelines, access roads and drilling locations. If the timber rattlesnake is discovered during the course of site construction, drilling and/or any other related site activities, appropriate action will be taken to ensure that the timber rattlesnake is protected.

Conclusion

The DEC excluded rattlesnake habitat from surface disturbance in the proposed leases and placed additional restrictions on activities in areas known to contain rattlesnakes.

ATVs

Five comments were received regarding the use of ATVs on State land.

The problem of unauthorized use of State land for ATV activity is a growing concern. Forest Rangers and Environmental Conservation Officers (ECOs) do patrol State lands to control ATV trespassers. Royalties generated from the gas production on State lands are deposited in the General Fund and disbursements from the General Fund pay for many ECO positions.

Summary

The DEC does prosecute and will continue to prosecute individuals who trespass on State lands with their ATVs.

Additional Comments

One comment was received which stated a concern that invasive weed seeds and invasive weeds would be brought to the State lands by migrating Canada geese and by vehicles traveling to drill sites. An individual questioned whether the \$2,000,000 maximum bond requirement was adequate to plug the deep wells. Two individuals stated that drilling noise would cause birds to abandon the area. One comment was received regarding the impact of drilling on the local economy. Two individuals asked about the impacts of the sale on tourism. Three comments were received from individuals who supported the State lease sale and complimented the DEC on its outreach efforts.

The DEC cannot control the introduction of weeds by geese, trucks, hikers, deer, birds and the wind.

The DEC believes the maximum bond is adequate financial security. Individual well bonds will continue to be required based on the costs to plug the well, up to the statutory \$2,000,000 maximum.

Drilling noise is a temporary minor impact. A typical well is actively drilling for approximately thirty days. Noise impacts have been mitigated in the past based upon site specific conditions and concerns. Mitigation includes the use of stacked hay bales as a sound barrier, the re-orientation of equipment on the site and the use of mufflers.

Natural gas exploration and development have benefitted the local economies significantly. Over \$10,000,000 in landowner royalties has been paid to the owners of the mineral rights in a four county area in the past four years. The list of owners who benefitted from the development of their mineral resources include: hundreds of landowners, towns, villages, businesses, churches, hunting clubs, a Kiwanis Club, a beagle club and a volunteer fire department.

Tourism should not be adversely impacted. Drilling activities are temporary, lasting approximately thirty days. Well sites are quickly reclaimed to the requirements of the DEC.

The DEC appreciates the acknowledgment of its efforts to provide information and to receive comments on the proposed sale.